

# PROVIDENCE, SC.

**SUPERIOR COURT**

**(FILED: July 18, 2023)**

**MUTUAL PROPERTIES APPLE  
VALLEY, LLC,  
Plaintiff,**

**V.**

**C.A. No. PC-2023-02357**

**STATE OF RHODE ISLAND  
DEPARTMENT OF BUSINESS  
REGULATION; ELIZABETH KELLEHER  
DWYER, in her capacity as Director;  
CATHERINE WARREN, in her capacity as  
hearing officer for the Department of Business  
Regulation; THE TOWN OF SMITHFIELD;  
by and through the Finance Director  
DANIELLE CAREY, in her capacity as  
Finance Director,  
*Defendants.***

## DECISION

**CRUISE, J.** The matter before the Court for decision is Mutual Properties Apple Valley, LLC's (Plaintiff) Motion for a Stay of the Order of Dismissal from the Rhode Island Department of Business Regulation (the DBR) and enjoining the Town of Smithfield (the Town) from issuing and/or transferring Copperfield's Inc.'s (Copperfield's) liquor license (the License). Jurisdiction is pursuant to G.L. 1956 § 42-35-15.

# I

## Facts and Travel

The present matter arises from a previous commercial landlord-tenant relationship between Plaintiff and Copperfield's that concluded when Plaintiff initiated an eviction proceeding against Copperfield's in Superior Court. (Complaint (Compl.) Ex. B (Order of Dismissal from the

DBR) at 2.) On January 20, 2023, the Superior Court entered Judgment in favor of Plaintiff, that Plaintiff and Copperfield's stipulated to, which granted possession of the leased premises and damages to Plaintiff in the amount of \$18,652 (the Judgment). *Id.*; *see also* Compl. Ex. A (the Judgment). The Judgment included a provision that explained in the event Copperfield's failed to vacate the premises by April 1, 2023, Copperfield's "shall owe liquidated damages in the amount of \$5,000.00 plus legal fees associated with any further possession action." (Compl. Ex. A ¶ 3.)

On February 21, 2023, the Town renewed the License, and on March 21, 2023, the Town approved the transfer of the License. (Compl. Ex. B at 3.) However, the Town conditioned the approval of the transfer "subject to any monies owed pursuant to the State of Rhode Island Superior Court stipulation, judgement and civil action in Kent County KD-2022-0655" and required Copperfield's to provide confirmation of payment. *Id.* Plaintiff submitted an appeal to the DBR for review of the Town's decision to renew the License and the Town's decision to transfer the License on March 3, 2023 and March 31, 2023, respectively. *Id.* at 1. The DBR consolidated said appeals. *Id.*

On April 17, 2023, Plaintiff initiated a separate Superior Court action against Copperfield's that alleged (1) Copperfield's did not vacate the leased premises by April 1, 2023, (2) Copperfield's left property behind at the leased premises, and (3) Copperfield's caused property damage to the leased premises. *Id.* at 3. On May 2, 2023, the Hearing Officer for the DBR held a remote hearing on Plaintiff's consolidated appeals; ultimately, the Hearing Officer issued an Order of Dismissal on May 10, 2023 (the Order) that dismissed Plaintiff's consolidated appeals for lack of standing. *See id.* 6-12.

On May 22, 2023, Plaintiff filed a Complaint initiating the present action that appealed the Order pursuant to § 42-35-15. *See generally* Compl. On June 1, 2023, Plaintiff filed a Motion to

stay the Order and enjoin the Town from issuing and/or transferring the License. (Motion to Stay/Injunctive Relief (Pl.’s Mot.) 1.) On June 13, 2023, the DBR filed its objection to Plaintiff’s Motion. (Docket.) Copperfield’s, who was not a named party in the Complaint, filed a Motion to Intervene on June 26, 2023 which was granted by the Court on July 6, 2023. *Id.* The Town filed its objection to Plaintiff’s Motion and memorandum of law in support thereof on July 6, 2023. *Id.* On July 7, 2023, Copperfield’s filed its objection to Plaintiff’s Motion and filed a memorandum in support thereof on July 10, 2023. *Id.* Plaintiff filed a reply memorandum in support of its Motion on July 10, 2023. The Court heard oral argument on Plaintiff’s Motion on July 11, 2023. *Id.*

## II

### Standard of Review

Section 42-35-15(c) of the Administrative Procedures Act states that “[t]he filing of the complaint does not itself stay enforcement of the agency order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.” Section 42-35-15(c). Our Supreme Court has explained that § 42-35-15(c) “grants to the reviewing court the power to grant a stay of an agency order under circumstances which in the trial justice’s sound discretion should require that matters be held in status quo pending review of the agency decision on its merits.” *State of Rhode Island Department of Corrections v. Rhode Island State Labor Relations Board*, 658 A.2d 509, 510 (R.I. 1995).

Additionally, our Supreme Court has determined that,

“[a] stay will not be issued . . . unless the party seeking the stay makes a ‘strong showing’ that (1) it will prevail on the merits of its appeal; (2) it will suffer irreparable harm if the stay is not granted; (3) no substantial harm will come to other interested parties; and (4) a stay will not harm the public interest.” *Narragansett Electric Company v. Harsch*, 367 A.2d 195, 197 (R.I. 1976).

These considerations ““are not prerequisites that must be met, but are interrelated considerations that must be balanced together”” by the Court. *Town of North Kingstown v. International Association of Firefighters, Local 1651, AFL-CIO*, 65 A.3d 480, 481 (R.I. 2013) (quoting *Service Employees International Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012)). Additionally, even though the *Harsch* criteria “may be persuasive in a given context...they [are not] rigid requirements that the reviewing court must meet in each instance” when deciding whether to grant a stay. *State of Rhode Island Department of Corrections*, 658 A.2d at 510.

### III

#### Analysis

In support of Plaintiff’s Motion, Plaintiff argues that it has satisfied the four considerations for granting the stay. *See generally* Pl.’s Mot. First, Plaintiff contends that it has demonstrated that it is likely to succeed on the merits of its appeal because Plaintiff is a creditor within the meaning of G.L. 1956 § 3-5-19(a). *Id.* at 4. In support, Plaintiff submits that because Copperfield’s failed to vacate the leased premises before April 1, 2023, Copperfield’s owes Plaintiff \$5,000 in liquidated damages and, therefore, the Town erroneously permitted the transfer of the License. *Id.* Second, Plaintiff argues that it will be irreparably harmed without the stay because “Plaintiff will be unable to adequately enforce its interests as a creditor.” *Id.* at 5. Finally, Plaintiff contends that no substantial harm will come to the other interested parties in this matter or the public interest because Plaintiff “received [a] favorable Judgment against Copperfield’s and is simply seeking to enforce its rights as a creditor,” and there is no indication that without the transfer of the License that the public will suffer. *Id.* at 6.

Conversely, Copperfield’s, the DBR, and the Town (Defendants) all advance similar arguments as to why Plaintiff has not demonstrated a likelihood of success on the merits. In

support, Defendants submit that Plaintiff is not a creditor because no court has determined whether Copperfield's actually failed to vacate the leased premises by April 1, 2023, thus entitling Plaintiff to \$5,000 in liquidated damages. *See* Defendant Copperfield's, Inc.'s Memorandum of Law Objecting to Plaintiff's Motion to Stay/Injunctive Relief (Copperfield's Mem.) 10-13, Town of Smithfield's Memorandum of Law in Support of its Objection to Plaintiff's Motion to Stay/Injunctive Relief (Town's Mem.) 3-5, Defendant-Appellee Department of Business Regulation's Objection to Plaintiff-Appellant's Motion to Stay (DBR's Mem.) 3-6. Additionally, the Town and Copperfield's contend that even if the Court were to determine that Plaintiff is a creditor, the Town had the authority and discretion to transfer the License under the plain language of § 3-5-19(a) regardless of Plaintiff's status as a creditor. *See* Copperfield's Mem. 15, Town's Mem. 5-6.

Second, Defendants argue that Plaintiff wholly failed to establish that it will suffer irreparable harm if the stay is not granted because Plaintiff has an adequate remedy at law since it has already instituted a separate action in pursuit of the alleged liquidated damages. *See* Copperfield's Mem. 17, Town's Mem. 6-7, DBR Mem. 6-7. Third, Defendants contend that Copperfield's will be irreparably injured if a stay is issued because Copperfield's business is styled as a bar and grill, and the liquor sales of the business make up a substantial portion of said business. *See* Copperfield's Mem. 17-18, Town's Mem. 7, DBR Mem. 8. Lastly, Copperfield's argues that a stay would be harmful to the public interests because (1) a stay "essentially operates to restrict the Town's ability to duly approve liquor license relocations and transfers" which would be "an unnecessary and improper intrusion and imposition upon the Town's legislatively granted authority" and (2) Plaintiff's failure to name and serve Copperfield's as a defendant in this matter

was direct failure to comply with statutory jurisdiction requirements, and Plaintiff should not be able to obtain a stay following said failure. (Copperfield’s Mem. 18-20.)

**1**

**Whether Plaintiff has Made a Strong Showing that it will Prevail on the Merits**

Section 3-5-19(a) states, in pertinent part:

“In all cases of transfer of license, indebtedness of the licensee incurred in the operation of the licensed premises shall be paid to or released by an objecting creditor before the issuing body permits the transfer. In cases of dispute as to the amount of indebtedness, the issuing body, may, in its discretion, permit the transfer upon statement of the licensee, under oath, that the claim of indebtedness is disputed and that the statement of dispute is not interposed for the purpose of inducing transfer of the license.” Section 3-5-19(a).

Nowhere in § 3-5-19 is there a definition for the term creditor as it is used in said section. *See generally* § 3-5-19. Moreover, nowhere in chapter 5 of title 3 is the term “creditor” defined. *See generally* chapter 5 of title 3. However, when interpreting a statute, the Court must first determine whether the statute is ambiguous. *Bucci v. Lehman Brothers Bank, FSB*, 68 A.3d 1069, 1078 (R.I. 2013). “‘It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.’” *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012) (quoting *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)).

Black’s Law Dictionary defines “creditor” as “[o]ne to whom a debt is owed; one who gives credit for money or goods.” Black’s Law Dictionary (11th ed. 2019); *see also Epic Enterprises LLC v. 10 Brown & Howard Wharf Condominium Association*, 253 A.3d 383, 388 (R.I. 2021) (citing Black’s Law Dictionary 464 (11th ed. 2019)). Plaintiff is arguing that it is a creditor under § 3-5-19(a) because Copperfield’s failed to vacate the lease premises before April

1, 2023 and, as a result, Copperfield's now owes Plaintiff \$5,000 in liquidated damages; therefore, it was error for the Town to permit the transfer of the License. *See* Pl.'s Mot. 4. At this time, Plaintiff's contention that it is owed \$5,000 is nothing more than a mere allegation because no Court has determined that Copperfield's actually owes Plaintiff said monies. Although Plaintiff has initiated a separate action in pursuit of the alleged liquidated damages, no determination has been made in that case as to whether Copperfield's actually owes Plaintiff the \$5,000. In other words, there is no evidence before this Court that Copperfield's in fact owes Plaintiff a debt. Therefore, Plaintiff is not a creditor of Copperfield's. *See* Black's Law Dictionary (11th ed. 2019) (defining "creditor" as "[o]ne to whom a debt is owed; one who gives credit for money or goods").

Moreover, the clear and unambiguous language of § 3-5-19(a) explains that the Town, as the "issuing body" for the License, had the authority to permit transfer of the License because the Town "may, in its discretion, permit the transfer upon statement of the licensee, under oath, that the claim of indebtedness is disputed and that the statement of dispute is not interposed for the purpose of inducing transfer of the license." Section 3-5-19(a). Even if Plaintiff was considered a creditor, § 3-5-19(a) makes it clear that the Town had the discretion to permit transfer of the License as long as the appropriate statement was provided under oath that the debt is disputed, which Copperfield's submitted to the Town via affidavit. *See id.*; *see also* Compl. Ex. B at 9 (explaining that Copperfield's submitted an affidavit disputing the alleged debt owed).

Accordingly, the Court determines that Plaintiff has not made a strong showing that it will prevail on the merits of its appeal of the Order because Plaintiff is not a creditor of Copperfield's, and the Town had the statutory authority to transfer the License under § 3-5-19(a). *See Harsch*, 367 A.2d at 197. Therefore, the Court need not consider the remaining *Harsch* criteria because Plaintiff failed to make a strong showing of success on its appeal, and as such, the Court will not

grant a stay of the Order. *See Town of North Kingstown*, 65 A.3d at 482 (explaining that a strong showing of success on appeal is the “sine qua non” of the *Harsch* analysis).

#### **IV**

#### **Conclusion**

For the foregoing reasons, Plaintiff’s Motion is **DENIED**. Counsel shall prepare and submit an order that is consistent with this Decision.





**RHODE ISLAND SUPERIOR COURT**  
*Decision Addendum Sheet*

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**TITLE OF CASE:** **Mutual Properties Apple Valley, LLC v. State of Rhode Island Department of Business Regulation, et al.**

**CASE NO:** **PC-2023-02357**

**COURT:** **Providence County Superior Court**

**DATE DECISION FILED:** **July 18, 2023**

**JUSTICE/MAGISTRATE:** **Cruise, J.**

**ATTORNEYS:**

**For Plaintiff:** **John O. Mancini, Esq.**

**For Defendant:** **Sara Tindall-Woodman, Esq.**  
**Joshua W. Nault, Esq.**